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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 4th January 2014

No. 87—IR (ID)-04/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th December 2013 in Industrial Dispute Case No. 10 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s BPTCL & Dream Team, Sahara, Bhubaneswar and their Workman Shri Dhoba Swain was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 10 OF 2012

Dated the 6th December 2013

*Present :*

Shri P. K. Ray, O.S.J.S. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Management of  
The Chief Executive Officer,  
M/s BPTCL & Dream Team, Sahara,  
2nd and 3rd Floor, Plot No. N-5/538,  
IRC Village (SBI Building),  
Nayapalli, Bhubaneswar.

.. First Party—Management

And

Its Workman Shri Dhoba Swain,  
At Qrs. No. VR-5/1,  
Kharvela Nagar, Unit-3,  
Bhubaneswar-3.

.. Second Party—Workman

*Appearances :*

For the First Party—Management	.. Shri N. C. Pal, Executive
For the Second Party—Workman	.. Shri S. Behera, Auth. Representative

**AWARD**

This case has been instituted under Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the 'Act') on a reference made by the Labour & Employment Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 1393—IR(ID)-04/2012-LE., dated the 23rd February 2012 with the following Schedule:—

“Whether the action of the management of M/s BPTCL & Dream Team, Sahara, Bhubaneswar in terminating the services of Shri Dhoba Swain, Squard workman with effect from the 3rd March 2011 by way of dismissal without following the principles of natural justice is legal and/or justified ? If not, what relief Shri Swain is entitled to ?”

2. The case of the second party workman is that he being selected by the first party management joined as a Conductor with effect from the 30th November 2010 with a monthly remuneration of Rs. 4,500. As the first party management violating the terms and service conditions engaged the workers for 14 to 16 hours without overtime wages and adopted various unfair labour practices, unrest developed amongst the workmen. Besides the second party workman due to his illness could not attend his duty from 11-2-2011 onwards and sent his leave application to the Depot Manager, who instead of granting leave returned the same to the second party. After recovery from his illness when he approached the management with a medical fitness certificate to permit him to resume the duty, he was refused employment. Further stand of the second party workman is that as the workmen of the Organisation formed a trade union and the present second party workman took active part in the said Union, the first party management became vindictive towards him and without any reason and in gross violation of the principles of natural justice terminated his service. Since the aforesaid termination is contrary to the provisions of Sections 25-F, 25-G and 33 and 2 (ra) of the Industrial Disputes Act, 1947, raised the dispute.

3. The first party management in its written statement refuting the allegation that the service of the second party workman has been terminated in violation of the provisions of the Industrial Disputes Act and the principles of natural justice has stated that since the date of his appointment on 30-11-2010 as a Junior Conductor under Trainee (Probationer) he was involved in anti -organizational activity and connived with the Driver for pilferage of revenue. Even he left the organisation without any intimation and did not join in spite of repeated telephonic instructions. Since he was appointed as a Trainee and his performance was unsatisfactory his service has been terminated. Hence, it has prayed for dismissal of the claim of the second party workman.

4. In the issues In the aforesaid premises, the issues framed are as follow :

**ISSUES**

- (i) whether the action of the management of M/s BPICL & Dream Team, Sahara, Bhubaneswar in terminating the services of Shri Dhoba Swain, Squard Workman with effect from the 3rd March 2011 by way of dismissal without following the principles of natural justice is legal and/or justified ?
- (ii) If not, what relief, Shri Swain is entitled to ?”

5. In order to substantiate their respective case while the second party workman examined himself as well as one of his co-workmen and filed documents marked Exts.1 to 4, the first party management examined one witness and filed documents marked Exts. A to D.

### FINDINGS

6. *Issue No. (i)*—The appointment Letter, Ext.A filed by the first party management shows that he was appointed as a Junior Conductor (Trainee) with effect from the 30th November 2010. On scrutiny of documents it is found that he has served under the first party management only for a period of 41 days. In the case of Om Prakash Mann Vrs. Director of Education (BASIC) and others, reported in AIR-2006(SC) 3096, the Hon'ble Supreme Court has clearly held that if a probationer is dismissed or terminated during the period of probation no opportunity is required to be given. Therefore, the question of violation of the principle of natural justice does not arise. In view of the principle decided by the Hon'ble Supreme Court the second party workman, a Trainee Conductor who stands in the same footing as that of a Probationer, has got no claim for his reinstatement in service or any compensation. Further the second party workman has served only for 41 days. So, he does not have any protection under Section 25-F of the Industrial Disputes Act. In view of the clear legal position and the undisputed factual aspects, the second party workman having no right to claim for any of the benefits there is no necessity to discuss any other points as raised by the second party workman.

7. *Issue Nos. (ii)*—In view of the findings arrived at on Issue No. (i) the second party workman is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY  
6-12-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P. K. RAY  
6-12-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor  
N. BEHERA  
Under Secretary to Government